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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re OSCAR R., JR., a Person
Coming Under the Juvenile
Court Law.

B293390
(Los Angeles County
Super. Ct. No.
18CCJP05213A)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

OSCAR R.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Julie F. Blackshaw, Judge. Affirmed.

Jamie A. Moran, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, and Veronica Randazzo, Deputy
County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Oscar R. appeals from the juvenile court's jurisdiction findings declaring his son Oscar R., Jr. (Oscar Jr.) a dependent of the juvenile court and from the court's disposition order. Oscar contends substantial evidence does not support the court's findings under Welfare and Institutions Code section 300, subdivision (b),¹ that Oscar's marijuana abuse placed Oscar Jr. at a substantial risk of serious physical harm. The Los Angeles County Department of Children and Family Services argues Oscar's appeal is not justiciable because he does not challenge the juvenile court's jurisdiction findings under section 300, subdivisions (a) and (b)(1), based on domestic violence between Oscar and Oscar Jr.'s mother, Esmeralda, and Esmeralda's substance abuse. In the alternative, the Department argues substantial evidence supports the juvenile court's findings and disposition order. We conclude that Oscar's appeal is justiciable and that substantial evidence supports the juvenile court's findings and order based on Oscar's marijuana use. Therefore, we affirm.

¹ Statutory references are to the Welfare and Institutions Code.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Family and the Petition*

Oscar and Esmeralda are the parents of Oscar Jr., who was 10 months old at the time of the jurisdiction and disposition hearing. On March 29, 2018 police received a report that a witness saw Oscar smoking marijuana in a car with Oscar Jr. present. Oscar admitted to an officer he smoked marijuana outside the car after he dropped off Esmeralda at a job interview. The officer arrested Oscar on an outstanding warrant for driving under the influence and reported the incident to the Department.

In July 2018 the Department received a report Oscar Jr. hit his head during a physical altercation between Esmeralda and Esmeralda's mother, who was holding the baby. During the ensuing investigation, Esmeralda's mother told the Department that Esmeralda and Oscar smoked marijuana while caring for Oscar Jr. The Department arranged for Oscar and Esmeralda to be tested for drugs and alcohol. Oscar failed to appear for his scheduled test, and Esmeralda tested positive for amphetamine, methamphetamine, and cannabinoids.

On August 14, 2018 the Department detained Oscar Jr. and placed him with a maternal aunt. The next day the maternal aunt informed the Department that Oscar and Esmeralda went to Esmeralda's mother's home and accused Esmeralda's mother of arranging to have Oscar Jr. taken from them. According to the maternal aunt, Oscar and Esmeralda, who appeared to be "under the influence," threatened to kill Esmeralda's mother.

On August 16, 2018 the Department filed a petition under section 300, subdivisions (a) and (b), alleging Oscar and

Esmeralda had a history of violent altercations, Esmeralda had a physical altercation with her mother and her aunt in Oscar Jr.'s presence, and Esmeralda abused controlled substances and marijuana. The Department also alleged in count b-4 Oscar was "a current abuser of marijuana." The Department alleged that Oscar Jr. required constant care and supervision because of his young age and that Oscar's use of marijuana interfered with his ability to provide appropriate care and supervision. The Department also alleged Oscar's substance abuse endangered Oscar Jr.'s physical health and safety and placed him at risk of serious physical harm.

In support of the allegations in count b-4, the Department's jurisdiction and disposition report cited a statement from Esmeralda that Oscar used marijuana "regularly" and snorted methamphetamine with her. Esmeralda, however, said she could not state how often Oscar used illegal substances because "they weren't together all the time." Oscar admitted he had smoked marijuana "for many years" but never smoked in his son's presence. He said he used marijuana "outside the home at night time when his son is asleep." He denied his marijuana use affected his ability to care for Oscar Jr.

B. *The Jurisdiction and Disposition Hearing*

At the jurisdiction and disposition hearing, the juvenile court sustained two amended counts under section 300, subdivision (a), and two counts under section 300, subdivision (b). The court sustained count b-3 concerning Esmeralda's substance abuse. Oscar contested count b-4 regarding his marijuana abuse "because of a total lack of evidence." The Department argued the record included evidence Oscar used marijuana while Oscar Jr.

was in his care, including the maternal grandmother's statement that Oscar and Esmeralda smoked marijuana while they were caring for Oscar Jr.² The Department also cited the report of the Multidisciplinary Assessment Team (MAT), which stated that Oscar and Esmeralda "have acknowledged substance use (marijuana (father) and marijuana and methamphetamines (mother)) to cope while child was in their care." The MAT report also stated: "Parents have a substance abuse history and if they were to relapse this may impact their parenting and ability to provide stability for Oscar [Jr.]" Oscar did not object to the MAT report.

The court found the Department had proven count b-4 by a preponderance of the evidence. The court stated the "parents always seem to think that as long as you smoke or snort or ingest the drugs outside of the presence of the child, it's all okay, but that's not what I'm concerned about. What I'm concerned about is whether or not you're under the influence while you take care of the child. . . . I find that the facts support that both of you have been under the influence of the drugs while . . . the child was in your care."

The court found by clear and convincing evidence that there was a substantial danger to the physical health and safety and emotional well-being of Oscar Jr. and that there were no reasonable means to protect him other than removing him from the physical custody of Oscar and Esmeralda. The court ordered

² At the hearing counsel for the Department stated Esmeralda made this statement, but the record suggests that only her mother made this statement.

Oscar, among other things, to participate in a drug treatment program. Oscar timely appealed from the court's jurisdiction findings and disposition order.

DISCUSSION

A. *Oscar's Appeal Is Justiciable*

Oscar does not contest the juvenile court's jurisdiction findings or the disposition order based on the sustained allegations of domestic violence, and Esmeralda has not appealed. Oscar contests the court's findings and disposition order only to the extent they were based on allegations of Oscar's marijuana abuse as alleged in count b-4. The Department argues Oscar's appeal is "not justiciable" because we can affirm the juvenile court judgment if the evidence supports the decision on any one of several grounds. (See *In re Drake M.* (2012) 211 Cal.App.4th 754, 762; *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) The Department essentially contends Oscar's appeal is not justiciable because, even if we agreed with Oscar substantial evidence does not support the juvenile court's finding that his marijuana abuse posed a serious risk of physical harm to Oscar Jr., we would not reverse the judgment. (See *In re A.B.* (2014) 225 Cal.App.4th 1358, 1364 [an appeal is moot if the reviewing court cannot grant effective relief]; *In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1054 [same]; see also *In re N.S.* (2016) 245 Cal.App.4th 53, 60 ["the critical factor in considering whether a dependency appeal is moot is whether the appellate court can provide any effective relief if it finds reversible error"].)

Oscar acknowledges the general principle that this court can affirm the juvenile court's judgment on any ground. Oscar

nevertheless contends we should hear his appeal because (1) the juvenile court's erroneous jurisdiction finding was the basis for a disposition order he also challenges, (2) the jurisdiction finding could prejudice him or impact the current or future dependency proceeding, or (3) the jurisdiction finding could have other consequences. (See *In re I.A.* (2011) 201 Cal.App.4th 1484, 1493; *In re D.C.* (2011) 195 Cal.App.4th 1010, 1015; *In re Alexis E.*, *supra*, 171 Cal.App.4th at p. 451; see also *In re M.W.* (2015) 238 Cal.App.4th 1444, 1452.) Oscar contends each of these considerations justifies review of the merits of his appeal. In particular, Oscar argues that the record does not show a "sufficient nexus between [his] marijuana use and a substantial risk of harm to his son" and that, had the court not sustained the allegations in count b-4, the court would have ordered a "very different" kind of "service plan."

We agree with Oscar that the juvenile court's jurisdiction findings on count b-4 underlie the court's order requiring him to enroll in a drug treatment program. Therefore, we will consider the merits of Oscar's appeal. (See *In re M.W.*, *supra*, 238 Cal.App.4th at p. 1452 [Court of Appeal will review the merits of jurisdiction findings that "appear to have motivated the [juvenile] court's order that mother address domestic violence in her individual counseling sessions"].)

B. *Substantial Evidence Supports the Juvenile Court's Jurisdiction Finding That Oscar's Marijuana Abuse Created a Serious Risk to Oscar Jr.'s Physical Health and Safety*

We review a challenge to the sufficiency of the evidence supporting the jurisdiction findings and disposition for

substantial evidence. (*In re I.J.* (2013) 56 Cal.4th 766, 773; *In re L.W.* (2019) 32 Cal.App.5th 840, 848.) “““In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” [Citation.] “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court.”” (*In re I.J.*, at p. 773; see *In re Alexis E.*, *supra*, 171 Cal.App.4th at p. 451 “[w]eighing evidence, assessing credibility, and resolving conflicts in evidence and in the inferences to be drawn from evidence are the domain of the trial court, not the reviewing court”). ““““[We] review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate].””” (*In re I.J.*, at p. 773.)

““Substantial evidence is evidence that is “reasonable, credible, and of solid value” such that a reasonable trier of fact could make such findings.” (*In re L.W.*, *supra*, 32 Cal.App.5th at p. 848; *In re D.C.* (2015) 243 Cal.App.4th 41, 52.) ““The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings or order.” (*In re D.C.*, at p. 52; *In re A.E.* (2014) 228 Cal.App.4th 820, 826.)

The juvenile court sustained count b-4 under section 300, subdivision (b), which provides for dependency jurisdiction where there is a substantial risk that the child will suffer “serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect

the child . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's . . . substance abuse." Oscar argues the Department "failed to establish any nexus between any supposed marijuana abuse by [him] and a danger to Oscar [Jr.] In fa[ct], the [D]epartment did not establish [Oscar] had a substance abuse problem at all." But it did.

"[A] finding of substance abuse for purposes of section 300, subdivision (b), must be based on evidence sufficient to (1) show that the parent or guardian at issue had been diagnosed as having a current substance abuse problem by a medical professional or (2) establish that the parent or guardian at issue has a current substance abuse problem as defined in the [American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (4th rev. ed. 2000) (DSM-IV-TR)]. The full definition of 'substance abuse' found in the DSM-IV-TR describes the condition as '[a] maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one (or more) of the following, occurring within a 12-month period: [¶] (1) recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home (e.g., repeated absences or poor work performance related to substance use; substance-related absences, suspensions, or expulsions from school; neglect of children or household); [¶] (2) recurrent substance use in situations in which it is physically hazardous (e.g., driving an automobile or operating a machine when impaired by substance use); [¶] (3) recurrent substance-related legal problems (e.g., arrests for substance-related disorderly conduct); and [¶] (4) continued substance use despite having persistent or recurrent social or

interpersonal problems caused or exacerbated by the effects of the substance (e.g., arguments with spouse about consequences of intoxication, physical fights).” (*In re Drake M.*, *supra*, 211 Cal.App.4th at p. 766, quoting DSM-IV-TR, at p. 199; see *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1219-1220 (*Christopher R.*).

In *Christopher R.*, *supra*, 225 Cal.App.4th 1210 we explained that the DSM-IV-TR is “not a comprehensive, exclusive definition [of substance abuse] mandated by either the Legislature or the Supreme Court” and that a juvenile court may find someone is a substance abuser even if his or her conduct falls outside the categories listed in the DSM-IV-TR. (*Id.* at pp. 1218-1220.) We also stated that the definition in the DSM-IV-TR “has been replaced in the more recent Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), published in May 2013 after the decision in *Drake M.*, by a more broadly defined classification of ‘substance use disorders,’ which combines substance abuse and dependence.” (*Id.* at p. 1218, fn. 6.)

Whether Oscar was smoking marijuana inside the car or outside the car on March 29, 2018, it is undisputed that Oscar Jr. was in Oscar’s care and that Oscar’s marijuana use led to his arrest that day on an outstanding warrant for driving under the influence. Esmeralda’s mother also reported that Oscar smoked marijuana while caring for Oscar Jr., and Oscar admitted as much to the multidisciplinary assessment team. There was also evidence that, on August 14, 2018, Oscar threatened to kill Esmeralda’s mother while “under the influence,” although the record does not state whether he was under the influence of alcohol, marijuana, or another drug. And Oscar failed to appear

for drug testing arranged by the Department. This evidence of child neglect, recurrent legal problems, and interpersonal problems, combined with Oscar's admission that he "has smoked marijuana for many years," was substantial evidence that, under either DSM definition, Oscar abused marijuana. (See *In re Natalie A.* (2015) 243 Cal.App.4th 178, 185 [evidence of marijuana abuse included that the father left his children of tender years without adequate supervision while he smoked marijuana and failed to enroll in drug treatment program as agreed to with the Department]; *Christopher R.*, *supra*, 225 Cal.App.4th at p. 1218, fn. 6 [definition of "substance use disorder" under DSM-5 includes "spending a lot of time getting, using, or recovering from use of the substance" and "not managing to do what one should at work, home or school because of substance abuse"].)

Because this case involves a child of "tender years," the Department "needed only to produce sufficient evidence that [Oscar] was a substance abuser" to support jurisdiction. (See *Christopher R.*, *supra*, 225 Cal.App.4th at p. 1220 [in cases involving children under the age of six, "the absence of adequate supervision and care poses an inherent risk to their physical health and safety"]; see also *In re Natalie A.*, *supra*, 243 Cal.App.4th at p. 185; *In re Drake M.*, *supra*, 211 Cal.App.4th at p. 767.) The Department met its burden.

There was substantial evidence Oscar's marijuana abuse made him unable to provide regular care for his infant son. (See *Christopher R.*, at p. 1220 [father's persistent use of marijuana "demonstrated an inability to provide regular care for [his] infant" daughter]; *In re Alexis E.*, *supra*, 171 Cal.App.4th at p. 452 [father's failure to protect children from marijuana smoke

created risk of harm].) Therefore, we affirm the jurisdiction findings and disposition order. (See *In re Natalie A.*, at p. 186 [“[h]aving determined the jurisdictional finding is supported by substantial evidence, we also conclude the court acted within its discretion by ordering services to address father’s drug abuse and the harm it posed to his children”].)

DISPOSITION

The judgment is affirmed.

SEGAL, J.

We concur:

ZELON, Acting P. J.

FEUER, J.